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10/789,278	02/27/2004	Edward F. Reus	MS1-1907US	8183
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LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			EXAMINER NGUYEN, DUSTIN	
			ART UNIT	PAPER NUMBER
			2154	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/789,278

Applicant(s)

REUS ET AL.

Examiner

DUSTIN NGUYEN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-40 are presented for examination.

Claim Objections

2. Claim 38 is objected to because of the following informalities: "*" at the end of line 9.
3. Claims 18-34 and 38-40 are objected to because of the following informalities: "the computing device" should be corrected as "the initial computing device".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 36 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. The following terms lack antecedent basis:

- I. the predetermined criteria - claim 36.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 17, 34, 37, and 40 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per claims 17, 34, 37 and 40, Applicant's disclosure provides intrinsic evidence that "a computer-readable medium" embodies computer readable instruction, data structure, program modules, or other data in a modulated data signal such as a carrier wave, as such data signal and carrier wave are being considered as non-statutory, since it is not limited to that which falls within a statutory category of invention because it is not a process, machine, manufacture, nor a composition of matter [Please see MPEP 2106].

Claim Rejections – 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1, 3-6, 10-12, 17, 18, 20-23, 27-29 and 34 are rejected under 35 U.S.C. 102(c) as being anticipated by Traversat et al. [US Patent Application No 2002/0184310].

9. As per claim 1, Traversat discloses the invention as claimed including a method comprising:

transmitting a query with a computing device in a domain [i.e. initiating a discovery query to discover peer groups] [paragraphs 0029, 0119 and 0123];

receiving, with the computing device, a response to the query from one or more neighbor-casting (NC) groups in the domain each including one or more said computing devices [i.e. one or more peer receiving the first peer's discovery query may reply to the query] [paragraphs 0126, 0128, 0332];

applying, with the computing device, a predetermined criteria to select one said NC group [i.e. criteria] [paragraphs 0029, 0119-0121, and 0127]; and

joining the computing device to the selected NC group [paragraphs 0122 and 0128].

10. As per claim 3, Traversat discloses wherein each said NC group has an identifier that is unique to other said NC groups in the domain [i.e. unique ID] [paragraphs 0103 and 0147].

11. As per claim 4, Traversat discloses wherein each said computing device is selected from among a video game console, a set top box, an automatic teller machine, a Personal Digital Assistance (PDA), a Personal Computer (PC), a cellular telephone, a printer, a facsimile

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machine, a copier, a multifunction peripheral device, and a server [paragraphs 0022, 0079 and 0099].

12. As per claim 5, Traversat discloses wherein each said response to the query is transmitted by one said computing device in a respective said NC group [paragraphs 0119 and 0126].

13. As per claim 6, Traversat discloses wherein the query is transmitted over a TCP network with a broadcast or multicast [paragraphs 0155 and 0157].

14. As per claim 10, Traversat discloses wherein one or more of the transmitting, the receiving, the applying, and the joining are executed by a component of an operating system of the computing device that is joined to the selected NC group [paragraphs 0096 and 0486].

15. As per claim 11, Traversat discloses wherein each of the transmitting, the receiving, the applying, and the joining are executed by the operating system of the computing device joined to the selected NC group [paragraphs 0016 and 0080].

16. As per claim 12, Traversat discloses wherein one or more of the transmitting, the receiving, the applying, and the joining are executed by an application that is running on the computing device joined to the selected NC group [paragraphs 0072 and 0097].

17. As per claim 17, it is rejected for similar reasons as stated above in claim 1.

18. As per claim 18, it is rejected for similar reasons as stated above in claim 1. Furthermore, Traversat discloses removing the initial computing device from the initial NC group [i.e. remove or invoke membership] [paragraphs 0380 and 0438].
19. As per claims 20-23, they are rejected for similar reasons as stated above in claims 3-6.
20. As per claims 27-29, they are rejected for similar reasons as stated above in claims 10-12.
21. As per claim 34, it is rejected for similar reasons as stated above in claim 18.

Claim Rejections – 35 USC § 103

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claims 2, 7-9, 13-16, 19, 24-26, 30-33, 35-40 rejected under 35 U.S.C. 103(a) as being unpatentable over Traversat et al. [US Patent Application No 2002/0184310], in view of O'Hara, Jr. et al. [US Patent No 7,302,256].

24. As per claim 2, Traversat does not specifically disclose wherein the predetermined criteria is selected from the group consisting of: the number of said computing devices in the selected NC group; a length of time between the query and the response from the selected NC group; and a combination of the foregoing. O'Hara discloses wherein the predetermined criteria is selected from the group consisting of: the number of said computing devices in the selected NC group; a length of time between the query and the response from the selected NC group; and a combination of the foregoing [i.e. selection according to variety of criteria] [Figure 3A; and col 10, lines 62-col 11, lines 47]. It would have been obvious to a person skill in the art at the time the invention was made to combine the teaching of Traversat and O'Hara because the teaching of O'Hara on selection criteria would enable facilitate deployment and configuration of access elements in a hierarchical wireless network system in a manner that seamlessly integrates with existing network infrastructures [O'Hara, col 3, lines 47-55].

25. As per claim 7, O'Hara discloses wherein the predetermined criteria to select one said NC group ignores each said response from any said NC group for which the length of time between the query and the response exceeds a predetermined maximum [i.e. after threshold period of time] [col 14, lines 36-45].

26. As per claim 8, O'Hara discloses wherein: each said response includes the number of computing devices in the responding said NC group [i.e. load parameter which associates with number of access elements] [col 10, lines 37-47]; and the predetermined criteria to select one said NC group ignores any said NC group for which the response includes the number of

computing devices in the responding said NC group that exceeds a predetermined maximum [i.e. select least load] [col 11, lines 1-5].

27. As per claim 9, Traversat discloses wherein each said response includes an identifier that is unique to the responding said NC group in the domain [paragraphs 0103, 0104 and 0147].

28. As per claim 13, Traversat discloses wherein the applying further comprises determining at least one of: a closest said NC group for which the corresponding response was first to be received. Traversat does not specifically disclose a smallest said NC group that has the least number of the computing devices from among those said NC groups for which the response was received. O'Hara discloses a smallest said NC group that has the least number of the computing devices from among those said NC groups for which the response was received [i.e. smallest number of access elements under management] [col 11, lines 43-47]. It would have been obvious to a person skill in the art at the time the invention was made to combine the teaching of Traversat and O'Hara because the teaching of O'Hara on selection criteria would enable facilitate deployment and configuration of access elements in a hierarchical wireless network system in a manner that seamlessly integrates with existing network infrastructures [O'Hara, col 3, lines 47-55].

29. As per claim 14, O'Hara discloses wherein the applying further comprises selecting the one said NC group to be the smallest said NC group when the closest said NC group is more than one said NC group [col 8, lines 4-12; col 10, lines 47-61; and col 11, lines 43-47].

30. As per claim 15, O'Hara discloses wherein the applying further comprises ordering said NC groups for which a corresponding said response was received according to: the length of time between the query and the corresponding response; and a number that quantifies the computing devices in the corresponding NC group as is contained in the corresponding response [i.e. selection priority] [Figure 3A; and col 10, lines 62-col 11, lines 47].

31. As per claim 16, it is rejected for similar reasons as stated above in claims 2, and 13-15.

32. As per claims 19, 24-26 and 30-33, they are rejected for similar reasons as stated above in claims 2, 7-9 and 13-16.

33. As per claims 35 and 36, they are rejected for similar reasons as stated above in claims 1, 2, and 18.

34. As per claim 37, it is rejected for similar reasons as stated above in claim 35.

35. As per claim 38, it is rejected for similar reasons as stated above in claims 1, 2, 7. Furthermore, Traversat discloses applying, with the computing device, a predetermined criteria to select one said NC group other than the initial NC group [i.e. join or leave peer group] [paragraphs 0380 and 0466].

36. As per claim 39, it is rejected for similar reasons as stated above in claim 16.

37. As per claim 40, it is rejected for similar reasons as stated above in claim 38.

38. A shortened statutory period for response to this action is set to expire **3 (three) months and 0 (zero) days** from the mail date of this letter. Failure to respond within the period for response will result in **ABANDONMENT** of the application (see 35 U.S.C 133, M.P.E.P 710.02, 710.02(b)).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dustin Nguyen whose telephone number is (571) 272-3971. The examiner can normally be reached on flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached at (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Dustin Nguyen/
Primary Examiner, Art Unit 2154